

§ 113.1

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AUTHORITY: 5 U.S.C. 5520a(k) and 10 U.S.C. 113(d).

SOURCE: 60 FR 1722, Jan. 5, 1995, unless otherwise noted.

§ 113.1 Purpose.

This part implements policy, assigns responsibilities, and prescribes procedures under 32 CFR part 112 governing delinquent indebtedness of members of the Military Services.

§ 113.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments (including the Coast Guard when it is not operating as a Military Service in the Navy by agreement with the Department of Transportation), the Chairman of the Joint Chiefs of Staff, the Unified Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components"). The term "Military Services," as used herein, refers to the Army, the Navy, the Air Force, the Marine Corps, and the Coast Guard.

§ 113.3 Definitions.

(a) *Appearance*. The presence and participation of a member of the Military Services, or an attorney of the member's choosing, throughout the judicial proceeding from which the judgment was issued that is the basis for a request for enforcement through involuntary allotment.

(b) *Applicant*. The original judgment holder, a successor in interest, or attorney or agent thereof who requests an involuntary allotment from a mem-

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ber of the Military Services pursuant to DoD Directive 1344.9.¹

(c) *Pay subject to involuntary allotment*. For purposes of complying with 32 CFR part 112 and 5 U.S.C. 5520a(k), pay subject to involuntary allotment shall be determined by:

(1) Including:

(i) Basic pay but excluding reduction for education for education benefits under section 38 U.S.C. 1411 ("New G.I. Bill").

(ii) Special pay (including enlistment and reenlistment bonuses).

(iii) Incentive pay.

(iv) Accrued leave payments (basic pay portion only).

(v) Readjustment pay.

(vi) Severance pay (including disability severance pay).

(vii) Lump-sum Reserve bonus.

(viii) Inactive duty training pay.

(2) Excluding:

(i) Retired pay (including disability retired pay).

(ii) Retainer pay.

(iii) Separation pay, Voluntary Separation Incentive (VSI), and Special Separation Benefit (SSB).

(iv) Allowances paid under titles 10 and 37 of the United States Code (e.g., Chapter 53 of title 10 and Chapter 7 of title 37, respectively) and other reimbursements for expenses incurred in connection with duty in the Military Service or allowances in lieu thereof.

(v) Payments not specifically enumerated in § 113.3(c)(1).

(3) After including the items in § 113.3(c)(1), subtracting the following pay items to compute the final earnings value of the pay subject to involuntary allotment:

(i) Federal and State employment and income tax withholding (amount limited only to that which is necessary to fulfill member's tax liability).

(ii) FICA tax.

(iii) Amounts mandatorily withheld for the United States Soldiers' and Airmen's Home.

(iv) Deductions for the Servicemen's Group Life Insurance coverage.

(v) Retired Serviceman's Family Protection Plan.

¹Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

(vi) Indebtedness to the United States.

(vii) Fines and forfeitures ordered by a court-martial or a commanding officer.

(viii) Amounts otherwise required by law to be deducted from a member's pay (except payments under 42 U.S.C. 659, 661, 662, and 665).

(d) *Preponderance of the evidence.* A greater weight of evidence that is more credible and convincing to the mind. That which best accords with reason and probability. (See Black's Law Dictionary²)

(e) *Proper and Timely Manner.* A manner that under the circumstances does not reflect discredit on the Military Service.

§ 113.4 Policy.

(a) It is DoD policy under 32 CFR part 112 that procedures be established for the processing of debt complaints against members of the Military Services and involuntary allotments from the pay of members of the Military Services.

(b) An involuntary allotment shall not exceed the lesser of 25 percent of a member's pay subject to involuntary allotment or the maximum percentage of pay subject to garnishment proceedings under the applicable State law.

(c) The amount of an involuntary allotment under 32 CFR part 112 and this part when combined with deductions as a result of garnishments or statutory allotments for spousal support and child support under 42 U.S.C. 659, 661, 662, or 665, may not exceed the lesser of 25 percent of a member's pay subject to involuntary allotment or the maximum percentage of pay subject to garnishment proceedings under applicable State law. In any case in which the maximum percentage would be exceeded, garnishments and involuntary allotments for spousal and child support shall take precedence over involuntary allotments authorized under 32 CFR part 112 and this part. Involuntary allotments established under 32 CFR part 112 and this part shall be reduced or

stopped as necessary to avoid exceeding the maximum percentage allowed.

(d) The Truth in Lending Act (15 U.S.C. 1601 note, 1601-1614, 1631-1646, 1661-1666j, and 1667-1667e) prescribes the general disclosure requirements that must be met by those offering or extending consumer credit and Federal Reserve Board Regulation Z (12 CFR 226) prescribes the specific disclosure requirements for both open-end and installment credit transactions. In place of Federal Government requirements, State regulations apply to credit transactions when the Federal Reserve Board has determined that the State regulations impose substantially similar requirements and provide adequate enforcement measures. Commanding officers, with the assistance of judge advocates, should check regulations of the Federal Reserve Board to determine whether Federal or State laws and regulations govern.

§ 113.5 Responsibilities.

(a) The Under Secretary of Defense for Personnel and Readiness shall monitor compliance with this part.

(b) The Under Secretary of Defense (Comptroller) shall ensure Defense Finance and Accounting Service (DFAS) implementation of this part.

(c) The Heads of the DoD Components shall ensure compliance with this part.

§ 113.6 Procedures.

(a) The following procedures apply to the processing of debt complaints against members of the Military Services.

(1) It is incumbent on those submitting indebtedness complaints to show that they have met the disclosure requirements of the Truth in Lending Act (15 U.S.C. 1601 note, 1601-1614, 1631-1646, 1661-1666j, and 1667-1667e) and Federal Reserve Board Regulation Z (12 CFR 226), and that they complied with the Standards of Fairness (appendix B to this part).

(2) Creditors subject to Federal Reserve Board Regulation Z (12 CFR 226), and assignees claiming thereunder, shall submit with their debt complaint an executed copy of the Certificate of Compliance (appendix A to this part), and a true copy of the general and specific disclosures provided the member

²Black's Law Dictionary, Fourth Edition, West Publishing Company, Saint Paul, Minnesota (1952).